

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES ROSSIGNOL, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-2409GM  
 )  
 ISLAMORADA, VILLAGE OF )  
 ISLANDS and DEPARTMENT OF )  
 COMMUNITY AFFAIRS, )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Islamorada, Florida, on August 15, 2001.

APPEARANCES

For Petitioner: Charles Rossignol, pro se  
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For Respondent Islamorada, Village of Islands:

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Weiss Serota Helfman  
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For Respondent Department of Community Affairs:  
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STATEMENT OF THE ISSUE

The issue is whether Islamorada Ordinance 01-05, which amended Policy 1-2.4.7 of Islamorada's comprehensive plan, is in compliance, as provided by Chapter 163, Part II, Florida Statutes.

PRELIMINARY STATEMENT

In January 2001, Islamorada transmitted its adopted comprehensive plan to the Department of Community Affairs. The Department of Community Affairs issued a statement and notice of intent to find the plan not in compliance. The Department of Community Affairs commenced DOAH Case No. 01-1216GM to challenge the comprehensive plan. No other parties intervened.

On May 7, 2001, Islamorada and the Department of Community Affairs entered into a stipulated settlement agreement under which Islamorada agreed to adopt certain plan amendments. On April 26, 2001, Islamorada adopted Ordinance 01-05, which contained the remedial amendments identified in the stipulated settlement agreement. These amendments altered Policy 1-2.4.7, but not Policy 1-2.1.0.

The Department of Community Affairs determined that, with the remedial plan amendments, the plan was in compliance. On May 21, 2001, the Department of Community Affairs issued a cumulative notice of intent to find the plan amendments in compliance. On June 12, 2001, the Administrative Law Judge

assigned to DOAH Case No. 01-1216GM issued an order closing file.

On June 6, 2001, Petitioner filed a petition challenging Policies 1-2.4.7 and 1-2.1.0, which govern vacation rental uses. The petition was filed within 21 days of the issuance of the cumulative notice of intent, but not within 21 days of the issuance of the original notice of intent.

As amended on June 13, 2001, the petition states that, if Policies 1-2.1.0 and 1-2.4.7 are found in compliance, Petitioner will be deprived of the income that he has derived from renting his Islamorada home for the past 20 years. The amended petition alleges that the policies are not supported by data and analysis.

On July 24, 2001, Islamorada adopted Ordinance 01-11, which rescinded the portion of the remedial plan amendment changing Policy 1-2.4.7 and restored the policy to its form, as originally adopted in the transmittal plan.

At the hearing, Petitioner called eight witnesses and offered into evidence seven exhibits: Petitioner Exhibits 1-7. Islamorada called three witnesses and offered into evidence 11 exhibits: Islamorada Exhibits 1-6 and 8-12. Department of Community Affairs called one witness and offered into evidence no exhibits. All exhibits were admitted.

The court reporter filed the transcript on September 4, 2001. The parties filed their proposed recommended orders by October 1, 2001.

FINDINGS OF FACT

1. Respondent Islamorada, Village of Islands (Islamorada), was incorporated on December 31, 1997. At the time of its incorporation, the Monroe County comprehensive plan applied to requests for development orders in the jurisdiction of Islamorada.

2. After conducting a number of public hearings and workshops, Islamorada adopted its initial comprehensive plan by Ordinance 00-09 on January 24, 2001 (Plan). On March 15, 2001, Respondent Department of Community Affairs (DCA) published its Notice of Intent to Find the Islamorada Comprehensive Plan not in compliance with Chapter 163, Part II, Florida Statutes, which is the Local Government Comprehensive Planning Act (Act). DCA commenced Department of Community Affairs v. Islamorada, Village of Islands, DOAH Case No. 01-1216GM, to challenge the Plan.

3. As the only parties to DOAH Case No. 01-1216GM, DCA and Islamorada entered into a Stipulated Settlement Agreement, under which Islamorada agreed to adopt certain remedial amendments. Consequently, on April 26, 2001, Islamorada adopted Ordinance 01-05, which contained the remedial amendments. On May 24, 2001, DCA published its Notice of Intent to Find the

Comprehensive Plans and Remedial Comprehensive Plan Amendments in compliance with the Act. Consequently, on June 6, 2001, the Administrative Law Judge issued an Order Closing File in DOAH Case No. 01-1216GM.

4. On the same day, Petitioner filed his Petition, which alleges that Policies 1-2.4.7 and 1-2.1.0 are not supported by data and analysis.

5. Ordinance 01-05 did not change Policy 1-2.1.0. For the reasons noted in the Conclusions of Law, Petitioner therefore is unable to challenge Policy 1-2.1.0.

6. With deletions stricken through and additions underlined, Ordinance 01-05 revised Policy 1-2.4.7 as follows:

Policy 1-2.4.7: Limit Transient Rental Use of Residential Properties. Islamorada, Village of Islands shall continue to prohibit the transient rental use of 28 days or less, of residential properties within the Village, including properties located within the Residential Conservation (RC), Residential Low (RL), Residential Medium (RM), and Mixed Use (MU) Future Land Use categories, except in tourist commercial Zoning Districts as provided for under Policy 1-2.10 of this Plan. Transient rental use may ~~be allowed~~ continue in multi-family developments ~~with 24-hour on-site security~~, excluding mobile home parks, in the Residential High (RH) FLUM categories based on an existing use as of May 1, 1999, upon a majority approval of all property owners within a mandatory owner association organized under Florida law, pursuant to the association requirements, and compliance with all applicable State regulations and Village codes. Property owners located in

the RL, RM, RC and MU future land use categories with valid transient rental licenses as of May 1, 1999 will have until May 1, 2003 to cease rentals of 28 days or less. Owners of such properties shall register with the Village and shall demonstrate to the Village that:

1. The transient use of 28 days or less of the property in question was existing as of May 1, 1999, and continues to exist;
2. All State and local licenses necessary for the conduct of transient rental use of the property have been secured; and
3. All impact fees have been paid.

Property owners permitted transient rental use pursuant to this Policy shall lose their privileges and retire their licenses prior to May 2, 2003 upon:

- ~~1. Transfer of ownership of the property at which the transient rental activity takes place; or~~
- ~~2. A combination of two of the any of the following being recorded: Code Violations as determined by the Hearing Officer and/or Sheriffs Field Contacts and/or substantiated written letters of complaint from neighbors submitted and on record with the Village.~~

the property being determined by nonappealable Final Order on more than two (2) occasions to have violated the Village Code.

7. After Islamorada adopted Ordinance 01-05, Petitioner filed his petition challenging Policy 1-2.4.7. After Petitioner filed his petition, Islamorada adopted Ordinance 01-11, which repealed the amendments contained in Ordinance 01-05 and

restored Policy 1-2.4.7 to its original form. However, Islamorada adopted Ordinance 01-11 on July 24, 2001--three weeks prior to the start of the hearing in this case. DCA had not yet issued a notice of intent, and the amended plan language was therefore largely irrelevant in this case.

8. For the same reasons, as explained in the Conclusions of Law, that Petitioner may not challenge Policy 1-2.1.10, he may not challenge Policy 1-2.4.7; Petitioner's challenge is limited to the revisions contained in Ordinance 01-05.

9. The revisions contained in Ordinance 01-05 relax the restrictions governing transient rentals, as contained in the original Plan. In its original form, Policy 1-2.4.7 required the cessation of transient rentals not in compliance with the policy by the earliest of: a) May 1, 2003, b) the conveyance of the rental property, or c) a combination of two Code violations or verified neighborhood complaints. The revisions eliminate the conveyance as an event terminating the right to enter into transient rentals, so, after the adoption of Ordinance 01-05, affected property owners could convey residences without depriving their grantees of the right to make transient rentals prior to May 1, 2003. The revisions also eliminate verified neighborhood complaints as a basis for the loss, prior to May 1, 2003, of the right of affected property owners to make transient rentals prior to May 1, 2003.

10. The ruling that Petitioner may not challenge Policy 1-2.4.7 in its original form moots Petitioner's case. It is evident that Petitioner does not oppose the relaxation of restrictions on transient rentals, as achieved by Ordinance 01-05.

11. In any event, data and analysis amply support the decision of Islamorada to relax the restrictions that it had imposed upon transient rentals. Neighborhood complaints supply a nebulous standard, and substantiation of such complaints, without defining the extent of verification, provides little more guidance.

12. Legal counsel supported the elimination of the restriction on conveyances. Given the close proximity of the ultimate compliance deadline, the restriction on conveyances probably did not substantially affect the market value of affected properties, so Islamorada could find data and analysis supporting the inclusion or exclusion of this condition shortening the timeframe for compliance upon the sale of an affected residence.

13. Even if Petitioner had timely challenged Policy 1-2.4.7, in its original form, data and analysis support the planning decision of Islamorada to restrict transient rentals. Transient rentals in residential neighborhoods facilitate a constant churning of home occupants. To the extent that this



process displaces longer-term occupancy, transient rentals impede the process by which neighborhoods and communities form and residents in these neighborhoods and communities connect with each other.

14. The commodification of neighborhoods in the service of tourism provides positive economic development to those property owners seeking to make transient rentals. However, to some extent, these economic gains are offset by those residents who wish to sustain less economically intense lifestyles. The desires of such residents may be ill-served by local merchants who price their goods to the more economically intense lifestyle of the tourist or by the replacement of more prosaic retailers, such as hardware stores, with the more ephemeral retailers, such as t-shirt stores.

15. To find support in data and analysis, the community envisioned by Islamorada in its Plan is not required to achieve the highest and best use for the greatest number of owners of property or the owners of the greatest area of property within the village's planning jurisdiction. On this record, data and analysis clearly support the planning decision initially made by Islamorada in adopting Policy 1-2.4.7, as well as the planning decision later made by Islamorada in relaxing the restrictions contained in this policy.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.57(1) and 163.3184(9)(b) and (16)(f), Florida Statutes. (All references to Sections are to Florida Statutes.)

17. Section 163.3184(1)(b) requires that the challenged Plan provision be in compliance with, among other provisions, Section 163.3177. Section 163.3177(8) requires that a plan be supported by data, and Section 163.3177(6)(a) requires that plan provisions governing future land uses be supported by various data and analysis. Rule 9J-5.005(2), Florida Administrative Code, requires that the challenged Plan provision be supported by data and analysis.

18. Section 163.3184(9)(a) requires that a person challenging a plan provision prove, to the exclusion of fair debate, that the provision is not in compliance.

19. Section 163.3184(16)(f)1 limits the scope of a challenge to a plan amendment. This provision describes the process in which DCA initially finds a plan or plan amendment not in compliance and the local government adopts a remedial plan amendment that satisfies the original objections of DCA. Section 163.3184(16)(f)1 directs the Administrative Law Judge to realign any remaining parties and proceed under Section 163.3184(9).

20. Contemplating the participation of parties that were not parties to the original case commenced by DCA, Section 163.3184(16)(f)1 states in part: "Any affected person not a party to the realigned proceeding may challenge the plan amendment which is the subject of the cumulative notice of intent by filing a petition with the agency as provided in subsection (9)." Not only does Section 163.3184(16)(f)1 require the use of the fairly debatable standard of proof, but it also limits the new party to a challenge of the plan amendment. Petitioner contends that he had waited to file a challenge to the Plan until Islamorada had resolved DCA's initial challenge in order to identify with greater certainty the Plan's approach to transient rentals. This contention is not without its appeal, but Section 163.3184(16)(f)1 clearly restricts Petitioner's challenge to the amendments to the Plan because he did not timely challenge any provisions of the Plan when it was first adopted.

21. Petitioner may thus not challenge Policy 1-2.1.10 because this policy was not the subject of Ordinance 01-05.

22. Petitioner may challenge the revisions to Policy 1-2.4.7 because it was revised by Ordinance 01-05. Although revisions of specific scope might permit an affected person to challenge the entire plan provision, as amended, rather than merely the plan amendments, the revisions here are clearly

severable. The revisions repeal conditions under which owners of affected property would lose their right to make transient rentals prior to May 1, 2003.

23. Petitioner has failed to prove to the exclusion of fair debate that the revisions relaxing the restrictions on transient rentals, as set forth in Policy 1-2.4.7, are not supported by data and analysis.

24. Even if the revisions were of such a scope as to allow Petitioner to challenge amended Policy 1-2.4.7, in its entirety, he has failed to prove to the exclusion of fair debate that Policy 1-2.4.7, as amended, is not supported by data and analysis.

#### RECOMMENDATION

It is

RECOMMENDED that the Department of Community Affairs enter a final order dismissing Petitioner's challenge to Ordinance 01-05 and finding the amendments contained in the ordinance to be in compliance with Chapter 163, Part II, Florida Statutes.

DONE AND ENTERED this 16th day of November, 2001, in  
Tallahassee, Leon County, Florida.

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ROBERT E. MEALE  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 16th day of November, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.